HOW RIGHTS TO FISHERIES CAME TO BE ESTABLISHED

Governor Carter Recites Some Interesting History for the Benefit of the Secretary of the Interior.

An interesting chapter of the history of Hawaii is told by Governor Carter's chapter on fisheries, contained in his annual report to the Secretary of the Interior. The Governor says:

As far back as 1839, at the time when all the lands and appurtenances were the absolute possession of the monarch, Kamehameha II issued a proclamation, which had the effect of law, giving to the chiefs, who held for him large tracts of land, fishing rights adjoining their lands and running sometimes for a space of three miles into the ocean.

At the great division of lands in the latter forties, a land commission was appointed to examine into the titles and carry out the division between the monarch, the chiefs, and the common people. This land commission recognized the fishing rights, and the various legislatures from time to time have enacted laws recognizing the right of the owner of the land to these fishing privileges, of which there are two classes—first, those which are described by metes and bounds in land awards, and secondly, those whose boundaries have been handed down by tradition from time immemorial. Thus the waters surrounding these islands have at no time in the past been free.

By reference to the article on the attorney-general's department it will be noted that Congress abrogated all exclusive fishing rights; but in order to protect vested rights, if any existed, provided that all claims must be filed within two years, and that they should be adjudicated in the courts of this Territory, and if it should be proven they were vested rights then the Territory must proceed to condemn and pay, from money not otherwise appropriated, for such fisheries, so that the same may be free to the public.

Owing to the high price and large consumption of fish by the people of these islands these rights are of great value; in some instances they are of more value than the land itself. There are at least 150 fishing privileges in the Territory, including almost all the waters surrounding the islands, while but 82 claims have been filed within the two years allowed by the organic act.

The matter was taken to the supreme court of the Territory, which decided that as these rights were granted by a general act of the legislature they were merely privileges and could be set aside by any future general act, and thus the claimants had no vested rights in the fisheries. The claimants, however, were not satisfied, and a case where there was an award granting fishing rights by metes and bounds was appealed to the Supreme Court of the United States, which in May of this year rendered a decision reversing the Territorial supreme court and upholding the theory of vested right. During the argument it was admitted by the court that it was doubtful whether Congress had the authority to place a limit upon the time wherein claimants must bring suit or lose their vested right. Since this decision not only the successful appellant, but probably others have taken possession of their rights and prohibited general fishing within their bounds, the Territory being, of course, helpless in the matter.

The Territorial officials are proceeding to bring all of these claims to trial to ascertain whether the claimants can prove their right to the fishing privileges by competent evidence and, upon such claim being proved, to bring condemnation proceedings as required by the organic act.

The Territory, however, is absolutely unable to meet the payment of these claims as prescribed by Congress. There is already a deficiency, and it is impossible to say when there will be funds unappropriated. In the meantime, however, these private owners, owing to the result of the litigation, will undoubtedly keep possession of their fishing privileges, and, if it is desired by Congress that they should be free to all, it seems impossible to accomplish this without the payment by the Federal Government of the value of these claims.

COURTS OF TERRITORY.

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commissioner of private ways and water rights.

A year ago there seemed to be a growing sentiment that the number of the supreme court justices should be increased to five. The increase in the number of cases brought to that court seemed to call for an increase in the membership of the court in order to enable it to keep up with its work, but various changes that have taken place in legislation and otherwise afford ground for belief that this difficulty will be overcome to some extent at least in the near future. There are other reasons, however, which have not been overcome, but which alone perhaps might not at present be deemed sufficient to require an increase in the number of justices. A decision by a bench of five is naturally more satisfactory than one from a bench of three, especially if one of the justices dissents. An increase to five would also to some extent meet the argument for allowing appeals in cases in which Federal cases are not involved, or, if such appeals should be allowed, it would reduce the number of such cases in which appeals would be taken. The expense and delay that would result from such appeals, owing, among other things, to the distance from Washington, or even from California, is something that should be avoided as far as possible.

The appropriations for salaries and expenses in the judiciary department have been reduced in line with the general policy of retrenchment in view of the financial stringency in the Territory, but it is doubtful if this will operate to an appreciable extent in diminishing the efficiency of the judiciary, although it will impose heavier burdens on some officials and work more or less hardship on others.

As a rule the courts are either up to date or not far behind in their work. In the first circuit court in particular much has been accomplished toward the relief of the calendar which was so congested a year ago. This has been brought about through almost continuous sessions of three judges trying jury and other cases, and was made possible mainly through legislation enacted by the last legislature. As a result, largely of the great number of cases so tried in the first circuit court, the calendar of the supreme court has gained somewhat on that court. There is reason to believe, however, that this court, and all the courts of the Territory, will be up to date in their work at no very distant time.

An additional court was added to the courts of record of the Territory by the last legislature, namely, the court of land registration.

This court has been in operation during the past year, though thus far it has had comparatively few cases.

Several much needed changes have been made recently in the Courthouse in Honolulu, especially in the construction of a vault for the records of the Supreme Court and First Circuit Court, and in the rearrangement of the clerk's offices and the library. There is need of new courthouses in several of the other circuits, the erection of which it is hoped will not be long delayed. Many volumes have been added to the Supreme Court and Circuit Court libraries during the past year.

The statistics of the judicial work of the courts are made up for the calendar years. It has been customary in the past to prepare the summaries for periods of two years for the biennial sessions of the Legislature. Hereafter they will be prepared yearly. The following will give a general idea of the number and character of the cases, both civil and criminal, and the nationality of the convicted in criminal cases. There are, of course, some duplications, owing to appeals from one court to another, and in some instances to a third court. In general there has been a slight falling off in the number of cases during the past year, as compared with the number during the preceding two years.

Attorney General Lorrin Andrews has this to say concerning matters in his department:

The Legislature in 1903 passed a law increasing the number of Circuit Court terms on the islands outside of Oahu, it being the expectation that as the county act then passed would go into force on the 1st day of January, 1904, the additional work of representing the Territory at these added terms would not fall upon the Attorney General's office, but upon the new county attorneys. The immediate result, however, was to increase the work of this department.

Between the last of September, 1903, and the 30th of June, 1904, there have been thirteen circuit terms held, at which 196 criminal cases have been tried and disposed of, resulting in 131 convictions and 65 acquittals; and to this should be added the work of the various grand juries and the prosecution of offenders charged with misdemeanors.

In addition to this jury work the Attorney General's office has argued in 28 cases in the Supreme Court, 19 of which have been decided in favor of the Territory, and has tried 37 civil cases for the Territory.

Mr. Dole in his report for the period ending December 31, 1902, recites that in two and one-half years he had rendered 341 legal opinions to the departments. Since February 1, 1903, and up to June 30, 1904, the Attorney General's office has rendered 439 opinions to the various departments and to the Legislature, of which 287 were rendered within the period covered by this report. In addition thereto, within the last year the Attorney General's office has had 654 oral consultations with heads of departments and has drawn for their use 87 agreements, contracts, leases and other legal papers. In addition to these matters the Attorney General's office for the first time in many years has, at the request of the Treasurer, handled suits for delinquent taxes on the Island of Oahu.

While the Federal Judiciary Department is thus treated by United States District Atorney Breckonst:

During the early part of the year the local officers of the United States District Attorney's Department became convinced of the existence within the Territory of some kind of an organization whose operations were resulting in the importation of women from Japan for the purpose of prostitution, and in many instances in the holding of them to a condition of slavery within the Territory. Systematic and persistent work finally resulted in the unearthing of everything connected with this organization. Ample evidence was secured, showing the methods employed by the organization, and the names and addresses of the members, about 75 in number. During the year all of the members were indicted, and about two-thirds of them convicted and punished, their sentences ranging from four to eighteen months. The prosecution in these cases was not directed so much toward the suppression of prostitution as against the importation of women into the United States for the purpose of prostitution, and the holding of women to slavery.

A kindred class of cases handled during the year related to the sale by male Japanese of their wives to other Japanese. Many instances were unearthed in which Japanese husbands had, by written bill of sale, made direct transfers of their wives. In almost every case discovered, indeed, there was discovered also a written bill of sale, the document being nearly always couched in legal phraseology, resembling quite closely the usual form of bill of sale of chattels in use in the United States.

In both classes of cases above referred to the sentences inflicted were comparatively lenient. Their prosecution among the Japanese was treated by the department as more or less educational in its nature. In nearly all of the cases it appeared that the practices indulged in by the Japanese were not considered by them as particularly criminal in their nature. Most of the defendants came into court and frankly admitted all the facts, stating, however, that they were not aware of the existence of any law in the United States making these practices unlawful.

The prosecutions have had, in my judgment, a most beneficial effect. Several of the Japanese newspapers published in Honolulu have contained full accounts of the proceedings, and the entire Japanese population have by this time become fully acquainted with American laws on the subject.

TREASURY ESTIMATE FOR COMING FISCAL YEAR

Governor Carter is in receipt of the tabulated estimates of the Treasury Department for the coming fiscal year, issued by the Secretary of the Treasury at Washington. The eminent gentleman who issued the book has made the mistake once more of classing Honolulu among the "Insular possessions" of the United States, but aside from that slip no fault can be found with the treatment of the islands. There have been no increases of salaries of Federal officials in the island, court or otherwise, but neither has the salary of anybody been cut down.

It is stated that the estimate for harbor work has been cut down from $526,100, which was the total asked for last year, when $200,000 was granted, to $400,000, and it is urgently recommended that the entire appropriation shall be made at once. This would make $200,000 available should Congress accept the estimate. Of course this is aside from any special appropriation that may be made by the Committee on Rivers and Harbors.

The Quarantine Service asks for $350,000 for the year, the same amount that was given last year, and the needs of Honolulu are looked after in this sum.